

Agenda

Item #4



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members
From: Jonathan Wayne
Date: August 18, 2008
Re: Overspending Violation by Gary Pelletier

Gary Pelletier was a Maine Clean Election Act (MCEA) candidate for the Democratic nomination in Senate District #35. He ran against Rep. Troy Jackson. Mr. Pelletier lost the primary election.

Based on the expenditures disclosed in Mr. Pelletier's post-primary campaign finance report, the Commission staff has made a preliminary finding that Mr. Pelletier spent \$245.23 more than was permitted under the MCEA. We recommend that at the August 25, 2008 meeting, you find Mr. Pelletier in violation of the MCEA and assess a civil penalty of \$50 for the violation. The candidate has already paid the proposed penalty of \$50, even though it has not yet been assessed by the Commission.

Spending Limitations on Maine Clean Election Act Candidates

After a candidate has qualified for MCEA funding, he or she may spend only public funds received from the state:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. (21-A M.R.S.A. §1125(6))

Spending more than is permitted is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. It is therefore important for MCEA candidates to keep track of their total expenditures and obligations to avoid exceeding the amount which they are authorized to spend.

Gary Pelletier's Campaign Spending

The candidate's primary election campaign was permitted to spend \$11,140.95.

Seed money received	\$1,420.00
Initial payment of MCEA funds made on 4/14/08	\$7,723.45
Matching funds authorized to spend on 6/6/08	\$1,997.50
Total	\$11,140.95

The candidate's post-primary campaign finance report indicates that his campaign spent a total of \$11,386.18, which is \$245.23 more than it was allowed. The summary page for the report is attached.

The Commission's Procedures for Advancing Matching Funds to Qualified Candidates

In addition to the initial payment each MCEA candidate receives for an election, some candidates qualify to receive matching funds which are usually paid in the last two weeks before an election. Most often, these matching funds are paid because an outside group such as a political party or political action committee has paid for a communication to voters in support of the candidate's opponent. The Commission pays relatively few candidates matching funds for the primary election, but roughly one-half of MCEA candidates in the general election receive matching funds.

When a candidate first qualifies to receive matching funds under the Maine Clean Election Act, the Commission requests that the State send to the candidate a payment of the *maximum* amount of matching funds for which the candidate *may* qualify to spend for the election. This will include the amount that the candidate is authorized to spend and an "unauthorized" amount that the candidate may not spend unless he or she receives additional authorizations from the Commission. Candidates are required to return unauthorized matching funds to the Commission within two weeks after the election.

The Commission first adopted this procedure of advancing the maximum matching funds in the 2000 election as a convenience to candidates. If the candidate receives additional authorizations to spend matching funds in the last few days before an election, the candidate will already have the funds in the candidate's bank account and can spend them immediately upon receiving the authorization from the Commission. The practice of advancing unauthorized matching funds is set forth in Chapter 3, Section 5(2)(C) of the Commission's rules (attached).

Almost all candidates who qualify to receive matching funds successfully restrict their spending to the "authorized" amount. In past elections, one or two candidates per election year have unintentionally spent the unauthorized funds, as Mr. Pelletier apparently did.

Gary Pelletier's Expenditures of Matching Funds

On June 6, 2008 (the Friday before the primary election), the Commission determined that Gary Pelletier was qualified to spend \$1,997.50 in matching funds based on an independent expenditure for telephone calls and radio advertisements made in support his opponent, Troy Jackson, by a political action committee. In keeping with the Commission's standard practice, we authorized the State of Maine to advance to the candidate \$15,492, which was the maximum amount of matching funds he could be authorized to spend for the primary election.

On June 6, 2008, an employee of the Commission (Assistant Director Paul Lavin) spoke with Mr. Pelletier by telephone and explained to him that the State would be sending a payment of matching funds to him and that he was authorized to spend \$1,997.50 of that payment. On the following Monday, we mailed Mr. Pelletier the attached letter dated June 6 notifying him that as of that date he was only authorized to spend \$1,997.50 of the payment.

Apparently, Mr. Pelletier did not understand the restriction. In a later conversation he had with Candidate Registrar Gavin O'Brien, it appeared that he did not understand that he was authorized to spend only \$1,997.50 of the June 6 payment.

Gary Pelletier's Opportunity to Respond

On August 1, 2008, the Commission staff sent the attached letter notifying Mr. Pelletier that the staff would recommend the assessment of a penalty of \$50 at your August 25 meeting for spending more than was permitted as a MCEA candidate, and that he could respond to the proposed penalty by telephone or in person at the August 25 meeting, or in writing. Mr. Pelletier submitted no written response, and instead submitted a \$50 penalty payment (apparently not intending to contest the penalty).

Staff Recommendation

The staff recommends that the Commission assess a penalty of \$50 under 21-A M.R.S.A. § 1127(1) for violating 21-A M.R.S.A. § 1125(6) by spending money other than MCEA funds to promote his election. The staff recommends assessment of the penalty to underscore that candidates must restrict their campaign spending to funds received from the Commission which they are authorized to spend. The recommended penalty is relatively small because:

- Mr. Pelletier already reimbursed the State for the \$245.23 out of his own pocket,
- the overspending apparently did not influence the ultimate outcome of the election (Mr. Pelletier lost), and
- because of Mr. Pelletier's confusion regarding the June 6, 2008 authorization of matching funds.

The Commission assessed penalties of \$50 for the same violation against 2006 candidate Anne Graham and 2007 special election candidate Clyde Dyar, who also spent more than they were permitted due to good-faith errors.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

August 1, 2008

Gary L. Pelletier
2873 Caribou Road
Cross Lake, ME 04779

Dear Mr. Pelletier:

After reviewing your post-primary election campaign finance report, the staff of the Ethics Commission has made a preliminary finding that your 2008 campaign for the Democratic nomination in Senate District #35 spent \$245.23 more than was permitted under the Maine Clean Election Act.

This is to notify you that at the August 25, 2008 meeting of the Ethics Commission, the staff will be recommending that the members of the Commission assess a civil penalty of \$50 against you for this violation. As explained below, you will have an opportunity to respond to the staff's preliminary finding of violation and proposed penalty in writing or at the meeting.

Limits on Spending by Maine Clean Election Act Candidates

After a candidate has qualified for Maine Clean Election Act funding, he or she may spend only public funds received from the state and authorized by the Commission:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. (21-A M.R.S.A. §1125(6))

When a candidate first qualifies to receive matching funds under the Maine Clean Election Act, the Commission sends to the candidate a payment of the maximum amount of matching funds for which the candidate *may* qualify to spend for the election. The Commission specifies the amount of that payment which the candidate is authorized to spend.

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. It is therefore important

for Maine Clean Election Act candidates to keep track of their total expenditures and obligations to avoid exceeding the amount which they are authorized to spend.

Your Campaign Spending

Your primary election campaign was permitted to spend \$11,140.95.

Seed money received	\$1,420.00
Initial payment made on 4/14/08	\$7,723.45
Matching funds authorized to spend on 6/6/08	\$1,997.50
Total	\$11,140.95

Our understanding is that your campaign spent a total of \$11,386.18, which is \$245.23 more than you were allowed.

One contributing factor to this violation may have been the payment of matching funds we mailed to you on June 6, 2008. The attached letter that was sent simultaneously with the payment explained that you were authorized to spend only \$1,997.50 of the payment. We believe you also spoke with a member of the Commission staff on June 6 who explained that you were permitted to spend only \$1,997.50. In later conversations you had with Candidate Registrar Gavin O'Brien, it appeared that you did not understand that you were only authorized to spend \$1,997.50

Ethics Commission's Consideration of this Matter

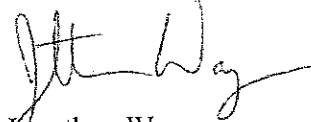
At the August 25 meeting, the staff will recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(6) by spending money other than your Maine Clean Election Act funds to promote your campaign. We will also recommend that the Commission assess a penalty of \$50 against you. The recommended penalty is relatively small because you have already reimbursed the state for the \$245.23, the overspending apparently did not influence the outcome of the election, and because of the confusion regarding the June 6, 2008 authorization of matching funds. The August 25 meeting will begin at 9:00 a.m. and will be held in the hearing room of the Public Utilities Commission at 242 State Street in Augusta.

You may respond to the proposed payment in writing or in person at the August 25 meeting. If we receive a written response by Friday, August 15, I will include the response in a packet of materials that is mailed to the Commission members in advance of the meeting. Please feel free to fax it to 287-6775 or e-mail it to me at Jonathan.Wayne@maine.gov. You are also welcome to respond to the proposed penalty by speaking to the Commission members at the August 25 meeting in person or by telephone. If you wish to participate by telephone, please let me know a few days in advance.

Please be aware that the Commission will have the discretion to assess a penalty that is greater or less than the staff recommendation, or to assess no penalty at all. Under 21-A M.R.S.A. §1127(1), the Commission can assess a penalty of up to \$10,000 for a violation of the Maine Clean Election Act.

Please telephone me at 287-4179 if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jonathan Wayne', with a stylized, cursive script.

Jonathan Wayne
Executive Director

cc: Roland Collins, campaign treasurer

STATE OF MAINE



RECEIVED

AUG 12 2008

MAINE ETHICS COMMISSION

Gary
2873
Cros:

GARY L. PELLETIER LINDA PELLETIER 2873 CARIBOU ROAD PH. 207-834-3468 CROSS LAKE, ME 04779		52-7445/2112 021333620	1365
PAY TO THE ORDER OF <u>Maine Clean Election</u>		DATE <u>8-10-08</u>	\$ <u>50</u>
TD Banknorth Maine		DOLLARS	Security Features Included Details on Back
MEMO <u>in full Penalty</u>		<u>[Signature]</u>	
1		1365	

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When a candidate first qualifies to receive matching funds under the Maine Clean Election Act, the Commission sends to the candidate a payment of the maximum amount of matching funds for which the candidate *may* qualify to spend for the election. The Commission specifies the amount of that payment which the candidate is authorized to spend.

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. It is therefore important



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AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

June 6, 2008

Gary L. Pelletier
2873 Caribou Road
Cross Lake, ME 04779

Dear Mr. Pelletier:

This is to notify you that the Maine Clean Election Act ("MCEA") authorizes you to spend \$1,997.50 in matching funds (the "authorization amount"), based on your opponent's fundraising and expenditures as well as independent expenditures made by others. As of the date of this letter, you have been authorized to spend a total of \$9,743.95. The table on the following page displays the details of your MCEA authorizations and payments for the 2008 primary election.

The Commission has requested the State to make a payment to you of \$15,492.00, which is the maximum amount of matching funds for which you may qualify for the primary election. You may only spend the authorization amount.

Please be aware that you are required to return to the Commission any matching funds which you have not been authorized to spend within 2 weeks after the primary election. Also after the primary election, you must pay all outstanding debts and return all unspent MCEA funds upon filing the 42-day post-election report. Those amounts must be repaid to the Commission by check or money order payable to the Maine Clean Election Fund.

If you have any questions, please do not hesitate to contact candidate registrar Gavin O'Brien at 287-4709. Thank you.

Sincerely,

Paul Lavin
Assistant Director

cc: Roland Collins, Troy Jackson

Requirements to Remember!

- 1) You must keep your Maine Clean Election Act funds and any unspent seed money in a separate bank account. Do not mix them with your personal funds.
- 2) Maine Clean Election Act funds must be used for campaign purposes only. If you have any questions, please read the 2008 expenditure guidelines.
- 3) Avoid using cash for expenditures over \$50. Use a check or debit card instead.
- 4) Make sure you have two records to back up every expenditure over \$50 – a receipt and proof of payment to the vendor (e.g., a cancelled check).
- 5) A travel log is required if the campaign reimburses you or a volunteer for travel.
- 6) After the election, you must return all unspent campaign funds to the Commission.

GARY L. PELLETIER

08/18/2008

CANDIDATE'S FULL NAME

Date Submitted


**SCHEDULE F
SUMMARY SECTION
(MAINE CLEAN ELECTION ACT CANDIDATES)**

CASH ACTIVITY		
	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT (if any)	3,126.80	
2. SEED MONEY CONTRIBUTIONS (Schedule A)	+ 0.00	1,420.00
3. MAINE CLEAN ELECTION ACT Payments (Schedule A)	+ 1,997.50	+ 9,720.95
4. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+ 0.00	+ 0.00
5. OTHER CASH RECEIPTS (interest, etc.)	+ 0.00	+ 0.00
6. MINUS EXPENDITURES (Schedule B)	- 5,369.53	- 11,386.18
7. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 + 5 - 6)	= -245.23	

OTHER ACTIVITY THIS REPORTING PERIOD		
8. IN-KIND SEED MONEY CONTRIBUTIONS (Schedule A-1)	0.00	13.65
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD	0.00	

unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

[2007, c. 443, Pt. B, §6 (NEW) .]

 **6. Restrictions on contributions and expenditures for certified candidates.** After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2007, c. 443, Pt. B, §6 (AMD) .]

6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

[2007, c. 443, Pt. B, §6 (NEW) .]

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8 in the following manner.

A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election. [2001, c. 465, §4 (AMD) .]

B. Within 3 days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election. [2001, c. 465, §4 (AMD) .]

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year. [2001, c. 465, §4 (NEW) .]

C. No later than 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. [2007, c. 443, Pt. B, §6 (AMD) .]

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

[2007, c. 443, Pt. B, §6 (AMD) .]

7-A. Deposit into account. The candidate or committee authorized pursuant to section 1013-A, subsection 1 shall deposit all revenues from the fund and all seed money contributions in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.

[2007, c. 443, Pt. B, §6 (AMD) .]

8. Amount of fund distribution. By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating

21-A §1127. Violations

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21-A §1127. Violations

* **1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. This fine is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2005, c. 542, §6 (AMD) .]

2. Class E crime. A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

[1995, c. 1, §17 (NEW) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD).

certified candidates in writing of any projected shortfall in the Fund and will specify timelines and procedures for compliance with this chapter in the event of any such shortfall.

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
 - (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

2. Timing of Fund Distributions

- A. **Distribution of Applicable Amounts.** The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§1125(7)] and this Chapter.
- B. **Matching Fund Allocations.** At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.
- C. **Advances**
 - (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.
 - (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the

Commission authorizing a matching fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. **Matching Fund Provision**

A. **General.** The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].

B. **Matching Fund Computation Involving Only Certified Candidates**

(1) For each certified candidate, the Commission will:

(a) add to the initial distribution amount for that election:

(i) the sum of any matching funds previously provided for that election, and

(ii) the sum of independent expenditures made in support of each certified candidate; and

(b) subtract the sum of independent expenditures made in opposition to each certified candidate.

(2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.

(3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.

C. **Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures.** In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

(1) The Commission will first determine the applicable amount for the nonparticipating candidate

(a) by adding:

(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and

SECTION 7. RECORD KEEPING AND REPORTING

1. **Record Keeping by Participating and Certified Candidates.** Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.

- A. **Fiduciary Responsibility for Funds.** All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account and may not be used until the candidate receives authorization to spend those funds.
- B. **Meal Expenses.** A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
- C. **Vehicle Travel Expenses.** A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

2. **Reporting by Participating and Certified Candidates**

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** Matching fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:



(1) **Unauthorized Matching Funds.** Candidates must return all matching fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.

(2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.

(3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.

C. **Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.

(1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.

(2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. **Recounts.** After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:

A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.